

REMARKS/ARGUMENTS

Claims 1 through 43 remain pending in this application.

Claims 1 through 43 stand rejected under 35 U.S.C. §102(e) as being unpatentable over Linares et al., U.S. Patent No. 6,264,626 (hereinafter "Linares").

Claim 1 provides a tampon applicator assembly that includes a barrel having a main section disposed between an insertion tip and a finger grip. The finger grip has a gripping region disposed between a first region and a flared region. A plunger is slidably received in the barrel. A pledget is disposed in the barrel between the insertion tip and the plunger so that a force applied on the plunger expels the pledget from the barrel at the insertion end. The first and flared regions each have an outer dimension that is about 10% to about 30% larger than an outer dimension of the gripping region.

Linares provides a paperboard applicator having an elongate paperboard insertion member with an insertion end and a gripper end opposite thereof. The gripper end has an indentation dimensioned to accept a user's digit with a first shoulder adjacent the gripper end and a second shoulder disposed toward the insertion end.

Applicants respectfully submit that Linares fails to disclose or suggest a tampon applicator assembly having a gripping region disposed between a first region and a flared region. Contrary to the claimed invention, the first and second shoulders in Linares form a perpendicular angle with the indentation, as clearly shown in Figure 1. In addition, "[t]he applicator of the present invention can be made by manipulating a pre-made insertion member through a series of steps as can be seen in FIGS. 2A-2D". Thus, Figures 2A through 2D result in the applicator shown in Figure 1. Moreover, Linares teaches away from a flared region, as provided by claim 1, by providing that "[t]he resistance provided by the shoulders 60 and 61 increases as their effective radius decreases (i.e. as the transition approaches 90°)." (col. 3, line 67 – col. 4, line 2).

Accordingly, Applicants respectfully submit that Linares fails to disclose or suggest all of the claimed features recited in claim 1, as well as claims 2 through 10 that depend from claim 1.

Independent claim 11 provides a tampon applicator assembly that includes a barrel having a tapered main section disposed between an insertion tip and a finger grip. The tapered main section has a maximum outer dimension located closer to the finger grip than to the insertion tip. A plunger is slidably received in the barrel. A pledget is disposed in the barrel between the insertion tip and the plunger so that a force applied on the plunger expels the pledget from the barrel at the insertion end.

The Action asserts the main section extends between the finger grip and the insertion tip, and therefore the taper just prior to the insertion tip is part of the main section. Applicants respectfully disagree. Paragraph [0031] of the application provides that, “[r]eferring now to FIGS. 3 and 4, insertion tip 20 and main section 22 intersect at a first plane 36, while the main section and finger grip 24 intersect at a second plane 38.” Linares provides that “[t]he insertion end may have a plurality of inwardly curved petals 40 that form a substantially closed dome 41.” (col. 3, lines 9-11). Thus, the petals 40, and any reduction in diameter created thereby, are a part of the insertion end. Contrary to the claimed invention, Linares provides a tubular member between the petals and the second shoulder that has a uniform diameter across its entire length, as clearly shown in Figures 1 through 2D.

Furthermore, Linares fails to disclose or suggest a tapered main section that has a maximum outer dimension located closer to the finger grip than to the insertion tip, as recited by claim 11. As discussed above, the Linares petals 40, and any reduction in diameter created thereby, are a part of the insertion end and the Linares tubular member has a uniform diameter across its entire length.

Therefore, Linares fails to disclose or suggest a barrel having a tapered main section disposed between an insertion tip and a finger grip, let alone that the tapered main

section has a maximum outer dimension located closer to the finger grip than to the insertion tip.

Accordingly, Applicants respectfully submit that Linares fails to disclose or suggest all of the claimed features recited in claim 11, as well as claims 12 through 20 that depend from claim 11.

Independent claim 21 provides a tampon applicator assembly that includes a barrel having a main section disposed between an insertion tip and a finger grip. The main section has a main section taper ratio of about 1.07 to about 1.15. A plunger is slidably received in the barrel. A pledget is disposed in the barrel between the insertion tip and the plunger so that a force applied on the plunger expels the pledget from the barrel at the insertion end.

The Action asserts that the main section of the barrel has a taper at the insertion end of between 1.07 and 1.15, as shown in Figure 1. Applicants respectfully disagree. The main section is disposed between an insertion tip and a finger grip, as provided by claim 21. The application further provides that "insertion tip 20 and main section 22 intersect at a first plane 36, while the main section and finger grip 24 intersect at a second plane 38", as clearly shown in Figures 3 and 4. (page 6, lines 20-24). Additionally, as provided on paragraph [0040], lines 1 through 3 of the specification, "[t]his tapering of main section 22 facilitates insertion comfort by gradually parting the vulva-vaginal channel over a longer length of barrel 14 than that of only insertion tip 20." As discussed above, the Linares petals 40, and any reduction in diameter created thereby, are a part of the insertion end and the Linares tubular member has a uniform diameter across its entire length. Thus, Linares fails to disclose or suggest a main section taper ratio of about 1.07 to about 1.15, as provided by claim 21.

Accordingly, Applicants respectfully submit that Linares fails to disclose or suggest all of the claimed features recited in claim 21, as well as claims 22 through 30 that depend from claim 21.

Independent claim 31 provides a tampon applicator assembly that includes a barrel having a main section disposed between an insertion tip and a finger grip. The insertion tip has a plurality of petals and a taper ratio of more than about 0.66. A plunger is slidably received in the barrel. A pledget is disposed in the barrel between the insertion tip and the plunger so that a force applied on the plunger opens the plurality of petals to expel the pledget from the barrel at the insertion end.

Linares does not disclose or suggest a taper ratio of more than about 0.66, as provided by claim 31. Page 7, lines 8 through 10 of the application provide that "[t]he taper of insertion tip 20 is defined as a ratio of length 40 of insertion tip 20 divided by the maximum outer dimension of the tip." Applicants respectfully submit that the proportions of features in a drawing are not evidence of actual proportions when drawings are not to scale. MPEP 2125. In addition, the application must disclose that the drawings are to scale in order for figures to be considered to scale. See *In re Wright*, 569 F.2d 1124, 193 USPQ 332 (CCPA 1977). Linares does not disclose that Figures 1 through 2D are to scale. Furthermore, "it is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue." See *Hockerson-Halberstadt, Inc. v. Avia Group Int'l*, 222 F.3d 951, 956, 55 USPQ2d 1487, 1491 (Fed. Cir. 2000). Thus, the patent drawings of Linares may not be relied on to show particular sizes if the specification is completely silent on the issue. Applicants respectfully submit that Linares is completely silent on taper ratio. Further, Linares merely provides that "[t]he insertion end may have a plurality of inwardly curved petals 40 that form a substantially closed dome 41." Thus, Linares does not disclose or suggest a taper ratio of more than about 0.66, as provided by claim 31.

Accordingly, Applicants respectfully submit that Linares fails to disclose or suggest all of the claimed features recited in claim 31, as well as claims 32 through 36 that depend from claim 31.

Claim 37 provides a tampon applicator assembly that includes a barrel having a main section disposed between an insertion tip and a finger grip. The insertion tip has a

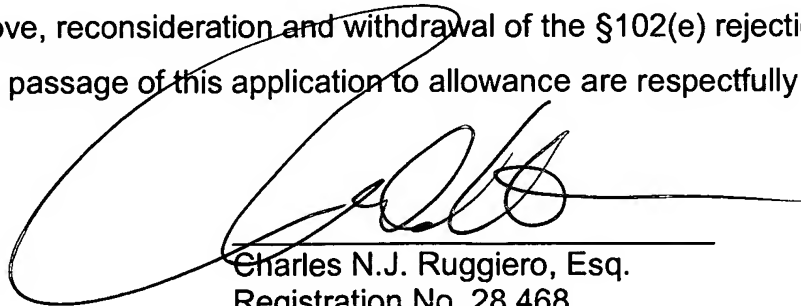
plurality of petals. The plurality of petals have a petal length-to-width ratio over about 2 to about 3. A plunger is slidably received in the barrel. A pledget is disposed in the barrel between the insertion tip and the plunger so that a force applied on the plunger opens the plurality of petals to expel the pledget from the barrel at the insertion end.

The Action asserts that Linares provides that the insertion tip comprises a plurality of petals, the petals having a length-to-width ratio of a least 2, as measured from Figure 1. As discussed above, Applicants respectfully submit that Figures 1 through 2D are not to scale. Furthermore, "it is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue." See *Hockerson-Halberstadt, Inc. v. Avia Group Int'l*, 222 F.3d 951, 956, 55 USPQ2d 1487, 1491 (Fed. Cir. 2000). Thus, the patent drawings of Linares may not be relied on to show particular sizes if the specification is completely silent on the issue. Linares is completely silent on petal dimensions, namely, length-to-width ratio. Thus, Linares fails to disclose or suggest that the plurality of petals have a petal length-to-width ratio over about 2 to about 3, as recited by claim 37.

Therefore, Applicants respectfully submit that Linares fails to disclose or suggest all of the claimed features recited in claim 37, as well as claims 38 through 43 that depend from claim 37.

In view of the above, reconsideration and withdrawal of the §102(e) rejections of claims 1 through 43 and passage of this application to allowance are respectfully requested.

August 28, 2006



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